IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4320 OF 1994

Vasant Balkrishna Wale,

Age 58 years, residing at

A/5/5 Achal Society,

Karve Road, Kothrud,

Pune-29. .... Petitioner

- Versus -

1. Vithal Mahadeo Deshmukh,

residing at Patas, Tal.

Daund, Dist: Pune.

2. Babu Devji Diwekar

3. Tukaram Bapu Jadhav,

Both residing at Patas,

Taluka Daund, Dist: Pune.

4. Tulshiram Daji Jagdale

(deceased) by his L.Rs.

4A. Uttam Tulshiram Jagdale,

Age 35

4B. Popat Tulshiram Jagdale,

Age 30

Both residing at Varvand,

Tal. Daund, District Pune.

4C. Manubai w/o Tulshiram

Jagdale

4D. Tarabai Kashinath Sonawane,

Age: 40, Occ: Household,

residing at Nhavare,

Tal. Shirur, Dist: Pune.

4E. Sou. Yamunabai P. Shitole,

Aged 25, Occ: Household,

residing at Khopodi,

Taluka Daund, Dist: Pune.

4F. Sou. Kamal D. Shievale,

Age 21, Occ: Household,

residing at Karvenagar,

Pune.

5. Vishnu Yashwant Divekar,

residing at Patas,

Tal. Daund, Dist: Pune.

6. The Special Land Acqui-

sition Officer No.12,

Now.19, Pune.

7. The State of Maharashtra .... Respondents

Shri P.N. Karlekar for the Petitioner.

Ms M.P. Thakur, Asst. Government Pleader,

for the Respondent Nos.6 and 7.

CORAM: R.M.S. KHANDEPARKAR &

V.M. KANADE, JJ.

DATED: SEPTEMBER 14, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. The petitioner by the present petition seeks direction for payment of interest over the amount deposited after a period of about 9 years from the date of the award in the proceedings under Section 30 of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act".

2. The undisputed facts in the case in hand are that the award under Section 11 of the said Act was passed on 15-11-1978 and the possession of the land was taken on 16-12-1978. While the amount awarded under the said award to the tune of Rs.96,648.88 ps. was deposited in the Court while making reference under Section 30 of the said Act only on 8-10-1987, no amount of interest over and above the sum awarded under the award dated 15-11-1978 was deposited in the reference Court while depositing the awarded amount of Rs.96,648.88 ps.

3. The learned Advocate appearing for the petitioner, while drawing attention to Section 34 of the said Act submitted that it was the duty of the Collector to

deposit the awarded amount along with the interest at the rate of 9% for the first year from the date of the award and for the remaining period at the rate of 15% per annum till the date of deposit of the amount. The learned Asst. Government Pleader submitted that the petitioner had enough opportunity of filing appeal against the final award passed by the reference Court under Section 30, besides that the petitioner had failed to demand such interest till April, 1992 and for the first time claimed the interest as late as on 29-4-1992 and that was much beyond the period of 3 years from the date of deposit of the amount and therefore the claim for interest was already barred by the law of limitation.

4. Upon hearing the learned Advocates for the parties, three points arise for consideration:-

(i) Whether it was obligatory for the Land Acquisition Officer to deposit the awarded amount along with the interest accrued thereon, while referring the matter under Section 30 of the said Act?

(ii) Whether the claim for interest is barred by the law of limitation?

(iii) Whether the petitioner could claim such amount

by way of writ petition?

5. The Section 34 of the said Act clearly provides that when the amount of the compensation fixed under Section 11 of the said Act is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited, provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

6. The statutory provisions comprised under Section 34, therefore, makes it abundantly clear that it is the duty of the Collector to deposit the interest amount along with the amount awarded under Section 11 when the matter is referred for adjudication in terms of the provisions of Section 30 of the said Act. In case such amount is deposited within a period of one year from the date of taking over of the possession of the land, the interest rate would be 9% per annum. However, in case the Collector fails to deposit the amount within such period of one year, then the interest to be paid for the period

after the expiry of one year would be at the rate of 15% per annum.

7. In the case in hand, it is not in dispute that the possession was taken as long back as on 16-12-1978 while the amount awarded under Section 11 of the said Act was deposited as late as on 8-10-1987 and, that too, without any interest being added to the said amount. Evidently, therefore, the Collector had not complied with his obligation under Section 34 of the said Act. Once it is clear that it was the statutory obligation of the Collector to pay interest along with the deposit of the amount consequent to taking over the possession of the land, merely because the party had failed to make demand in that regard, that cannot absolve the Collector from his responsibility to deposit the interest. The Section 34 nowhere requires any demand to be made by the person interested. On the contrary, it clearly speaks of statutory obligation to pay interest at the specified rate, irrespective of the fact whether there is demand or not for such interest. Being so, the question of applicability of the law of limitation as such would not arise at all. The default on the part of the Collector would continue till the date the Collector fails to deposit the amount and in that respect the cause of action would be continuing one and would arise every day of default on the part of the Collector.

8. The contention about the availability of appeal remedy against the award under Section 30 also would not debar the claimant from approaching this Court under Article 226 of the Constitution of India. The Collector's duty to pay interest on the awarded amount relates to statutory obligation of the public authority and failure to perform such obligation and consequently the right of the petitioner in that regard being affected. Besides, it is not in dispute that at one point of time there was specific demand in that regard. Being so, once the petitioner has been able to show that he had made a specific demand for performance of statutory obligation by the public authority for the benefit of the petitioner and such public authority had failed to perform such obligation, certainly the petition for issuance of writ of mandamus would be maintainable and particularly when the matter does not involve any disputed questions of fact.

9. The first and the third points for consideration, therefore, are answered in affirmative, while the second point for consideration is answered in negative.

10. The petitioner has furnished the calculation regarding the amounts so payable in terms of the provisions of Section 34 on the compensation of Rs.96.648.88 ps. The same reads thus:-

"Since 16.12.78 to 15.12.79 Rs. 8,217.09

at the rate of 9% for first year	
Since 16.12.79 to 15.12.86 for 7 years at 15%	Rs. 95,866.05
Since 16.12.86 to 15.9.87 Interest for nine month at the rate of 15%	Rs. 10,271.25
Since 16.9.1987 to 8.10.1987 at the rate of 15%	Rs. 912.91
So the total comes to	Rs.1,15,267.30

This is the additional claim statement."

The calculations submitted as above are not in dispute. Being so, the respondents were duty bound to deposit the sum of Rs.1,15,267.30 ps. being the interest payable on the compensation amount in terms of Section 34 as on 10-10-1987.

11. The petition, therefore, succeeds. The respondents are directed to deposit the said amount of Rs.1,15,267.30 ps. within a period of four weeks from today in the District Court at Pune who shall apportion and disburse the same in accordance with the award dated 7-1-1994 in Land Reference No.5 of 1988, as expeditiously as possible. The rule is made absolute in above terms with costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**